Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
Request for Clarification filed by Maupin	)	

REPLY COMMENT TO SIRIUS XM'S COMMENTS IN RESPONSE TO PUBLIC NOTICE ABOUT REQUEST FOR CLARIFICATION FILED BY PATRICK MAUPIN

Patrick Maupin
2206 Southern Oaks Drive
Austin, TX 78745
(512) 743-8620
pmaupin@gmail.com

August 13, 2019

SUMMARY

This is a reply comment to the comment of Sirius XM (Sirius), filed pursuant to Public Notice DA 19-601 (seeking comment on my Request for Clarification).

The quality of Sirius' commentary ranges from silly to downright goofy. It would be absurd (and take many times the 15 pages Sirius put into this) to refute each sub-point of its assertions in detail, so I will just attempt to hit the highlights.

1) Sirius contends that my informal request was improper. It was perfectly proper under Noerr-Pennington, and under the Commission's rules, it is up to the Commission itself to decide how to respond to my request. It was not a request for reconsideration, as Sirius suggests, and I have not "admitted" that a three-line footnote in a 164 page document is dispositive of anything. To the contrary, the sheer magnitude of the 2003 Report and Order shows the massive effort that went into its compilation, so it would not be surprising if a few small errors crept in. I only suggested what, to me, seemed the only plausible explanation that would give some effect to the footnote without contradicting the plain text of the EBR rule and all the other plain text interpreting it; and truly was asking if this makes sense to the Commission.

2) Sirius contends that the Commission's opening of a formal public comment period was improper as well. The Commission can decide that question on its own, but to the extent that Sirius contends that any investigation is both late in the instant case, and would upend fifteen years of settled law, Sirius is wrong on both counts.

2a) The hearing at which objections may be heard in Buchanan v. Sirius XM is scheduled for November 8th. I am an absent class member, and if I am to have the ability to actually object and possibly alter the course of the litigation at that hearing, then it cannot possibly be too late for me to be collecting evidence and opinions to use In November. Sirius suggests the only proper hearing would be a sham hearing, with the court rubber-stamping its agreement with plaintiffs and ignoring all objectors. (On July 2, I moved to intervene (response, response, reply) in Buchanan v. Sirius XM. The court has not yet ruled on this motion, but even if it denies it, I still have the opportunity to object at the November hearing.)

2b) I can find no instance of any other party relying on the now-infamous footnote 382, in any court case or Commission action. Sirius itself did not even seem to discover it immediately. Buchanan's complaint was filed on March 13, 2017. Sirius's answer, filed on June 15, 2017, did not reference this footnote. I do not have access to all the court documents, but footnote 382 does not seem to have been referenced by Sirius itself until

it was used in a string of citations in Sirius's response to Buchanan's motion to certify the class, over a year later, on July 30, 2018.

So it seems unlikely that the very fate of the universe as we know it depends heavily on footnote 382. (I also gave additional argument on this in my own July 29 comment.) In fact, the *only* reason I asked the Commission for clarification on this particular footnote is that it is the **only** text authored by the Commission that Sirius cites that could possibly support their position (if you squint and tilt your head just right).

2c) The example of the computer system with a printer (the second example in the EBR section of the FTC's TSR compliance page) is, obviously, more widely applicable. I disagree with this example on general principles, because, for example, my car has a warranty from General Motors, but I did not buy it from General Motors, and I expect no telemarketing calls from General motors.

Unfortunately, even this example does not help Sirius, either, for several reasons. First, of course, is that it is promulgated by the FTC, not the Commission, and while it is desired that the rules are in harmony, it is not a strict requirement. Second, that web page is not the official text, or an official interpretation, of even the FTC's regulations, and even if it was, it did not appear to exist until February of 2015 (although perhaps the same text did exist on another page.) Finally, though, and fatal to Sirius's position, is that the example states that the customer "may" have an EBR with the company "as long as the customer has a contractual relationship" with it. As the 9th Circuit found in Knutson v Sirius XM, Sirius's deals with car manufacturers and dealers, wherein it offers a free trial subscription and then sends a "welcome packet", do not actually form contracts with end customers. The Court applied a test that is strikingly similar to the "voluntary two-way communication" requirement in 47 CFR 64.1200(f)(5).

3) Sirius asserts that "As [my] Request acknowledges, information about the Sirius XM subscription as a component of the vehicle was featured prominently on the car's large, informational Monroney sticker—the window label that federal law requires to display key information about new vehicles."

3a) Even if this was true, it does not speak to "voluntary" or "two-way," especially as it would have been impossible to buy a Chevy Bolt without Sirius XM.

3b) In any case, it's not actually true. I never said the information was displayed "prominently" on the sticker, and, well… The reader can judge for himself; I have attached a copy of the sticker at the end of this reply comment.

4) Sirius contends it is not a "third party provider." But co-branding doesn't change ownership. If Sirius got my information from the dealer, then the dealer breached the

privacy disclosure it gave to me; if it got my information from General Motors, then that's simply one third-party giving it to another third-party; and if it found it elsewhere, then co-branding is immaterial in any event.

5) Sirius contends that it has some EBRs with some people, and that this a fact-based inquiry. This is true. But the Commission's Report and Order makes it clear that it is Sirius's responsibility to be able to prove that it had the EBR, not anybody else's responsibility to prove a negative. This proof, and the inquiry required to provide it, is much simpler and less fact-intensive than Sirius claims or wishes it was.

6) Sirius discusses agency principles. But it cannot plausibly claim that it is an agent of the dealer.

7) Sirius claims, yet again, that I "bought" a subscription to its services. If this is true, then monopoly considerations abound – Sirius itself claims to have more than 80% of the new car market in this country. But it's simply not true. I bought a car, not a radio that happens to be usable as a transportation device. It's not just my opinion; the 9th Circuit agreed in Knutson v. Sirius XM.

8) Sirius writes:

> Second, the premise of Mr. Maupin's argument appears to be that an EBR exists only so long as a seller and a buyer continue to have regular interactions or transactions. As Mr. Maupin puts it, an EBR is created because the cellular service provider will "keep provisioning" service. But that argument is inconsistent with the Commission's explicit time limits in its EBR regulations. An EBR created "on the basis of the subscriber's purchase or transaction with the entity" lasts for "eighteen (18) months." And an EBR created "on the basis of the subscriber's inquiry or application regarding products or services offered by the entity" lasts for "three months." An EBR is not indefinite or interminable. To the contrary, the Commission already carefully calibrated the duration of an EBR to consumer expectations, and its rule accords with the FTC's.

Sirius's contention here is baffling. It would be normal for any cellphone company to *charge money* in order to "keep provisioning" service, and that this act of *charging money* would occur regularly (probably monthly) and would keep an established business relationship, well, established, so there is no issue with time limits.

9) In Sirius's Reply Comment of today, they claim that both my assertion that the footnote contradicts the text of the Report and Order, and my assertion that General Motors may not have an established business relationship with me are new, only brought up in the comment. It probably would not matter if they were completely new, but in

point of fact, the entire point of my original request is obviously that the footnote does not comport with the rest of the text, and my original request did mention that a purchaser of toothpaste from a retail store would have only a tenuous relationship with the manufacturer, and also mentioned that "there are wider questions about the applicability of the footnote that the Commission, on reflection, may need to address in a formal Order."

The Commission's public notice explicitly stated that "We seek comment on this and any other issues raised by the Request for Clarification." It stands to reason that a reasonable starting point for any inquiry into whether Sirius has an EBR with the consumer is whether the automobile manufacturer has such a relationship; these questions may not be inextricably linked, but they are certainly not unrelated.

CONCLUSION

It should be clear from Sirius's comment (and PACE's parallel comment) that Sirius is serious in its belief that it can attach a token free sample to something we buy, and then claim this establishes a business relationship with us. As I said in my original request, this interpretation of the established business relationship requirements of the TCPA, if widely adopted, would completely eviscerate the utility of the National DNC registry.

The Commission should take whatever actions it deems prudent to insure that the National DNC registry continues to function as it was intended, and the personal attacks by Sirius on me fully explain their utter contempt for the registry. How dare I complain, or get upset, about only three calls from them! As the Commission knows, of course, three calls from them to each of 14 million people, and three calls from all PACE's other members to millions of other consumers – starts to add up to a significant number of calls.

Respectfully submitted,

/s/ *Patrick Maupin*
Patrick Maupin
2206 Southern Oaks Drive
Austin, Tx 78745
pmaupin@gmail.com

CHEVROLET

2019 BOLT EV LT

EXTERIOR: SLATE GRAY METALLIC
INTERIOR: DARK GALVANIZED/SKY COOL GRAY

ELECTRIC DRIVE UNIT

Visit us at www.chevy.com

STANDARD EQUIPMENT

ITEMS FEATURED BELOW ARE INCLUDED AT NO EXTRA CHARGE IN THE STANDARD VEHICLE PRICE SHOWN

- CHEVROLET COMPLETE CARE SEE WWW,CHEVY.COM OR DEALER FOR TERMS, DETAILS & LIMITS
- 3YRS / 36,000 MILES BUMPER-TO-BUMPER WARRANTY
- 5YRS/ 60,000 MILES POWERTRAIN LIMITED WARRANTY
- ROADSIDE ASSISTANCE
- COURTESY TRANSPORTATION
- 8 YEAR / 100,000 MILE ELECTRIC PROPULSION COMPONENT LIMITED WARRANTY SEE DEALER FOR DETAILS

MECHANICAL

- BATTERY, PROPULSION, LI-ON
- ELECTRIC DRIVE UNIT
- ELECTRIC PARKING BRAKE
- POWER STEERING, ELECTRIC
- CHARGING CORD, 120 VOLT
- ELECTRONIC PRECISION SHIFT
- REGEN ON DEMAND

SAFETY & SECURITY

- AIRBAGS: FRONTAL & KNEE FOR DR. & FRT PASS, HEAD CURTAIN & SEAT-MOUNTED FOR ALL OUTBOARD SEAT POSITIONS
- TIRE PRESSURE MONITOR SYSTEM
- THEFT DETERRENT SYSTEM
- STABILITRAK-STABILITY CONTROL SYSTEM W/ TRACTION CONTROL
- BRAKES, 4 WHEEL ANTILOCK, 4 WHEEL DISC
- REAR VISION CAMERA
- PEDESTRIAN SAFETY SIGNAL
- REAR CHILD SEAT LATCH ANCHORS
- HEADLAMP CONTROL AUTOMATIC ON & OFF

EXTERIOR

- WHEELS, 17" PAINTED ALUMINUM
- TIRES, ALL-SEASON BLACKWALL PUNCTURE-SEALING
- MIRRORS, OUTSIDE HEATED, POWER-ADJUSTABLE, BODY-COLOR MANUAL FOLDING
- HEADLAMPS, HID PROJECTOR
- DAYTIME RUNNING LAMPS, LED

INTERIOR

- KEYLESS OPEN AND START
- REMOTE VEHICLE START
- FRONT BUCKET SEATS, 6 WAY MANUAL DRIVER & PASS ADJUST
- STEERING COLUMN, TILT & TELESCOPIC
- AIR CONDITIONING, AUTOMATIC
- POWER WINDOWS EXPRESS DOWN, DRIVER EXPRESS UP
- REAR SEAT, 60/40 SPLIT FOLD
- STEERING WHEEL CONTROLS
- DRIVER INFORMATION CENTER, 8" DIAGONAL MULTI-COLOR DISPLAY

CONNECTIVITY FEATURES

- ONSTAR (R) SERVICES CAPABLE (SUBJECT TO TERMS SEE ONSTAR.COM)
- 4G LTE WI-FI (R) HOTSPOT CAPABLE (SUBJECT TO TERMS SEE ONSTAR.COM)
- CHEVROLET INFOTAINMENT SYSTEM 10.2" DIAG. COLOR TOUCHSCREEN ADDITIONAL FEATURES FOR COMPATIBLE PHONES INCLUDE: BLUETOOTH AUDIO STREAMING VOICE COMMAND PASSTHROUGH TO PHONE, ANDROID AUTO & APPLE CARPLAY CAPABLE
- SIRIUSXM ALL ACCESS + SERVICE SUBSCRIPTION SOLD SEPARATELY BY SIRIUSXM AFTER 3 MTHS
- USB PORTS
- AUDIO SYSTEM - 6 SPEAKER

OPTIONS & PRICING

MANUFACTURER'S SUGGESTED RETAIL PRICE

STANDARD VEHICLE PRICE	**$36,620.00**

OPTIONS INSTALLED BY THE MANUFACTURER (MAY REPLACE STANDARD EQUIPMENT SHOWN)

DC FAST CHARGING PROVISIONS	750.00
COMFORT AND CONVENIENCE PKG:	555.00
• INSIDE REARVIEW MIRROR, AUTO DIMMING	
• DRIVER & FRONT PASSENGER HEATED SEATS	
• LEATHER WRAP HEATED STEERING WHEEL	
DRIVER CONFIDENCE PACKAGE:	495.00
• REAR PARK ASSIST	
• REAR CROSS TRAFFIC ALERT	
• LANE CHANGE ALERT W/SIDE BLIND ZONE ALERT	
INTERIOR PROTECTION PACKAGE (DEALER INSTALLED)	210.00
CARGO NET (DLR INSTALLED)	65.00
TOTAL OPTIONS	$2,075.00
TOTAL VEHICLE & OPTIONS	$38,695.00
DESTINATION CHARGE	875.00

TOTAL VEHICLE PRICE*	**$39,570.00**

EPA DOT Fuel Economy and Environment

Electric Vehicle

Fuel Economy

119 MPGe Small station wagons range from 22 to 119 MPGe. The best vehicle rates 136 MPGe.

128	110	28
combined city/hwy	city	highway	kW-hrs per 100 miles

Driving Range

When fully charged, vehicle can travel about...

0 — 50 — 100 — 150 — 200 — **238** miles

Charge Time: 9.3 hours (240V)

You save $4,250 in fuel costs over 5 years compared to the average new vehicle.

EVX

Annual fuel cost $550

Fuel Economy & Greenhouse Gas Rating (tailpipe only)

1 — 10 — 10 Best

Smog Rating (tailpipe only)

1 — 10 — 10 Best

This vehicle emits 0 grams CO_2 per mile. The best emits 0 grams per mile (tailpipe only). Does not include emissions from generating electricity; learn more at fueleconomy.gov.

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 27 MPG and costs $7,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at $0.13 per kW-hr. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

fueleconomy.gov
Calculate personalized estimates and compare vehicles

Smartphone QR Code™

GOVERNMENT 5-STAR SAFETY RATINGS

Overall Vehicle Score ★★★★★
Based on the combined ratings of frontal, side and rollover.
Should ONLY be compared to other vehicles of similar size and weight.

Frontal Crash — Driver ★★★★★ / Passenger ★★★★
Based on the risk of injury in a frontal impact.
Should ONLY be compared to other vehicles of similar size and weight.

Side Crash — Front seat ★★★★★ / Rear seat ★★★★
Based on the risk of injury in a side impact.

Rollover ★★★★★
Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.
Source: National Highway Traffic Safety Administration (NHTSA)
www.safercar.gov or 1-888-327-4236

Equipped with the safety and security of OnStar®.
Visit **onstar.com** for details.
onstar.com/privacy

PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS CARLINE:
U.S./CANADIAN PARTS CONTENT: 18%
MAJOR SOURCES OF FOREIGN PARTS CONTENT: KOREA 64%

NOTE: PARTS CONTENT DOES NOT INCLUDE FINAL ASSEMBLY, DISTRIBUTION, OR OTHER NON-PARTS COSTS.

FOR THIS VEHICLE:
FINAL ASSEMBLY POINT:
LAKE ORION, MI U.S.A.
COUNTRY OF ORIGIN:
ENGINE (MOTOR): KOREA
TRANSMISSION (ELECTRIC DRIVE UNIT): KOREA

This label has been applied pursuant to Federal law – Do not remove prior to delivery to the ultimate purchaser. *Includes Manufacturer's Recommended Pre–Delivery Service. Does not include dealer installed options and accessories not listed above, local taxes or license fees.

ORDER NO WHJJVF SALES CODE E
SALES MODEL CODE 1FB48
DEALER NO 07090
FINAL ASSEMBLY:
LAKE ORION, MI U.S.A.

VIN 1G1FY6S05K4102238

DEALER TO WHOM DELIVERED
JAMES WOOD CHEVROLET–CADILLAC
PO BOX 50779
DENTON, TX 76206-0779

TD
1GA0777828